



PROCUREMENT & CONTRACTING

MAINTAINING ELIGIBILITY

FOR FEMA FUNDING

Washington State

Emergency Management Division

PROCUREMENT HANDOUTS

- 44 CFR Part 13.36
- Federal Contracting Provisions
- FEMA RP9580.201 – Contracting Checklist
- Procurement Methods Guide & Checklist



FEDERAL PROCUREMENT REGULATIONS

- Applicants must follow the more restrictive regulations between federal, state & local
- Must have full and open competition
- Must perform cost or price analysis for every procurement action
- Clearly show rationale for method of procurement, selection of contract type, adequate competition, and price basis



PROCUREMENT PROCEDURES

- Comply with federal procurement requirements, specifically 44 CFR 13, 17 and 206.
- Specific methods outlined in 44 CFR 13.36
- Contracts must comply with applicable labor regulations. Davis-Bacon does not apply unless contract includes work being funded by other federal funds, i.e. Federal Highway Administration (FEMA 322, page 44)
- State prevailing wage always applies



COSTS & REASONABLE REIMBURSEMENT

○ Reasonableness Criteria

- Must be fair and equitable
- Applicable to type of work
- “Prudent” person decision
- Is cost ordinary and necessary for facility and type of work?
- Were actions taken in prudent manner?



COSTS & REASONABLE REIMBURSEMENT

- Normal procedures must not be altered because of the potential for reimbursement from Federal funds.
- Reasonable costs can be established through
 - Historical documentation for similar work
 - Average costs for similar work in the area
 - Published unit costs
 - FEMA cost codes

<http://www.fema.gov/government/grant/pa/eqrates.shtm>



ACCEPTED PROCUREMENT METHODS

- Small Purchase Procedures
- Sealed Bids
- Competitive Proposals
- Non-Competitive Proposals



SMALL PURCHASE PROCEDURES

- Small purchase procurement is an informal method for securing services or supplies that do not cost more than \$100,000 by obtaining several price quotes from different sources.



SEALED BIDS

- This is a formal contracting method where:
 - The bids are publicly advertised and solicited
 - The contract is awarded to the lowest responsible bidder and lowest price
 - This method is the preferred method for procuring construction contracts



COMPETITIVE PROPOSALS

- Similar to sealed bid procurement
- Contracts are awarded on the basis of contractor qualifications instead of on price
- This method is generally used for procuring architectural or engineering professional services



NON-COMPETITIVE PROPOSALS

- A proposal is received from only one source
- Document why you chose this type of contract
- Cost-analysis is required
- Only use when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals, and one of the following circumstances applies:
 - The item is available only from a single source
 - There is an emergency requirement that will not permit delay
 - FEMA may authorize noncompetitive proposals
 - Solicitation from a number of sources has been attempted, and competition is determined to be inadequate.



ACCEPTABLE CONTRACTS

- Lump Sum Contracts
- Unit Price Contracts
- Cost Plus a Fixed Fee Contracts



LUMP SUM CONTRACTS

- Competitive Process
- Can be either sealed or competitive negotiation
 - Sealed Bid: Contractors bid a firm fixed price bid including all labor, equipment, materials, overhead, & profit
 - Competitive: Contractors submit proposals based on pre-stated factors
- Well defined & reasonable scope of work
- Amendments are by exception
- Except for amendments, contract price will not change



UNIT PRICE CONTRACTS

- Often used when quantities needed to do the work are not known in advance
- Units of work determined in advance by unit of measure; i.e. CY, LF
- Competitive process
- Bid price is “in place” cost including labor, materials, equipment, overhead, & profit
- Often awarded on an annual basis to multiple firms to insure availability & price competition
- Prices must be deemed reasonable



COST PLUS A FIXED FEE

- Used when full extent of scope cannot be fully predicted in advance
- Contractor is reimbursed for reasonable, with-in scope costs
- Contractor bids a fixed fee for the contract to include overhead & profit



GENERALLY UNACCEPTABLE CONTRACTS

○ Time & Materials Contracts

- Accepted only in very limited situations
- Generally not more than 70 hours for work that is necessary immediately after a disaster when a clear scope of work cannot be developed

○ Piggyback Contracts

- May be evaluated for fair & reasonable costs
- Limited dollar amount



TIME & MATERIALS CONTRACTS

- State guidelines must be followed
- Requirements
 - Must have a written scope
 - Must have a cost ceiling or “not to exceed” provision
 - Strict monitoring & documentation of expenses
 - Cost must be reasonable & work must be approved and within the scope
 - Prescribed duration for emergency work only



TIME & MATERIALS CONTRACTS

- Cost structure for labor to include overhead & profit
- Use FEMA or State approved equipment rates
- Competition still a requirement unless emergency occurs that requires immediate response or there is no available competition
- Check on debarred/suspended status



PIGGYBACK CONTRACTS

- A concept of expanding a previously awarded contract.
- Does not meet the requirements of 44 CFR 13
 - it is non-competitive
 - may have an inappropriate price structure
- This type of contract is not eligible.
 - However, FEMA may separately evaluate and reimburse costs it finds fair and reasonable. This is extremely rare!



UNACCEPTABLE CONTRACTS

- Costs plus a percentage of Cost
 - Specifically disallowed under 44 CFR 13.36 (f)(4)
- Contingency Contracts
 - Specifically disallowed under federal procurement guidelines
 - There is never an advance assumption of federal reimbursement



FEMA vs. WSDOT/FHWA

- Governed by different titles of the CFR
- The WSDOT LAG manual contracting guidelines follow the FHWA under CFR Title 23 and typically applies to road & bridge construction
- Eligibility questionable if seeking FEMA funding



VERBAL CONTRACTS

- No verbal contracts
- Specifically prohibited under federal procurement regulations
- On an emergency basis, an agency may grant an on-site, verbal authorization of a contract. This must be followed up immediately (*within one week*) by a written contract that meets all federal procurement regulations.



EMERGENCY CONTRACTING

- Review & amend your established emergency contracting procedures so they are in line with federal procurement regulations.
- Document all actions
- Follow up within a short period with open, competitive process



WHAT YOU CAN DO NOW...

- Evaluate your procedures and identify the differences
- Develop contract formats and solicitation processes ahead of time
- Look at pre-event, pre-priced, competitively obtained contracts. This will help ensure compliance & speedy response & recovery



PLANS, SPECIFICATIONS, & ESTIMATES

- After the applicant elects to contract for repair, a set of contract documents consisting of Plans, Specifications and Estimates (PS&E) will be prepared
- Send to EMD for review and approval.
- Failure to have the plans, specifications and bid tabulations for large projects reviewed prior to contract award jeopardizes funding eligibility



BEFORE AWARDING A CONTRACT

- The bid tabs must be reviewed and approved by EMD prior to awarding the contract
- You **MUST** verify that the contractor has not been debarred, suspended, or otherwise identified as being ineligible for contracts funded with state and federal monies
- Document the verification



DEBARRED CONTRACTOR LISTING

- Federal Debarment List
 - www.EPLS.gov
- Contractor Bond & Insurance information
 - www.lni.wa.gov
- State UBI Information
 - www.dor.wa.gov
- Secretary of State – Corporation Information
 - www.secstate.wa.gov



RESOURCES

- WA EMD web page: <http://www.emd.wa.gov>
- WA OFM web page: <http://www.ofm.wa.gov>
- State web page: <http://www.access.wa.gov>
- FEMA web page: <http://www.fema.gov>



STAFF RESOURCES

- Gary Urbas
Deputy SCO
Public Assistance
253-512-7402
g.urbas@emd.wa.gov
- Alysha Kaplan,
Regional PA Supervisor
253-512-7434
a.kaplan@emd.wa.gov
- Jill Nordstrom
Regional PA Supervisor
253-512-7428
j.nordstrom@emd.wa.gov

PA Fax number:
253-512-7405



PUBLIC ASSISTANCE COORDINATORS

- Amy Gillespie
a.gillespie@emd.wa.gov
253-512-7452
- Jon Holmes
j.holmes@emd.wa.gov
253-512-7429
- Evelyn Peters
e.peters@emd.wa.gov
253-512-7423

